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Supreme Court, U.S.
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No. 99-1952

IN THE

# Supreme Court of the United States

STATES OF ALABAMA, CALIFORNIA, CONNECTICUT, IDAHO, INDIANA, MARYLAND, MICHIGAN, MISSISSIPPI, MONTANA, OHIO, SOUTH DAKOTA, VERMONT, WISCONSIN AND WYOMING,

*Petitioners*,

v.

UNITED STATES DEPARTMENT OF ENERGY AND CHEVRON U.S.A. INC.,

*Respondents.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit**

## BRIEF OF NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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## WRITTEN CONSENT OF THE PARTIES

Pursuant to Rule 37(2)(a), submitted separately today are the original, written consents of all parties consenting to the filing of a brief amicus curiae. The parties include the Respondents, the United States and Chevron U.S.A., Inc., and Petitioners, the several states.

## INTEREST OF THE AMICUS CURIAE

The National Association of State Energy Officials ("NASEO") is a 501(c)(3) organization incorporated in Washington, D.C., in 1986.[1/] NASEO executed an agreement to adhere to policies of the National Governors' Association. NASEO represents, and includes as full voting members, representatives of the energy offices in all the states, territories and the District of Columbia and excludes the Commonwealth of Virginia. NASEO is dedicated to supporting a balanced national energy policy, including support for a diversity of demand and supply-side resources. NASEO works with its members to share good programs and to educate other state and federal policy makers on positive energy ideas.

NASEO is extremely interested in the outcome of this case because if any oil overcharge refunds are provided, then the States will distribute a large proportion of the refunds to good uses to assist consumers, including low-income consumers.

## SUMMARY OF THE ARGUMENT

NASEO adopts the legal arguments advanced by the Petitioners, the several states. Review of this case is warranted so that public officials can vindicate public rights. To deny Petitioners would deny a forum for this important case, thus

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[1/] Pursuant to Rule 37(6), this brief was authored by Kathleen Mazure, Jeffrey C. Genzer and Sean M. Neal, counsel to NASEO. No persons or entities, other than NASEO and its members, made a monetary contribution to the preparation or submission of this brief.

decimating the purpose of the Transfer Statute. If oil overcharge refunds were to be recovered in this case, the States, represented, in part, by NASEO members, would expend these funds to support such important activities as fuel assistance for the poor, weatherization programs to improve the energy efficiency of the homes of low-income Americans and other important energy conservation activities. In an era of high, and extremely volatile, oil, heating oil, natural gas and electricity prices, such programs are especially critical.

## ARGUMENT

NASEO adopts the substantive legal arguments of the Petitioners, the States of Alabama, California, Connecticut, Idaho, Indiana, Maryland, Michigan, Mississippi, Montana, Ohio, South Dakota, Vermont, Wisconsin and Wyoming, presented through their respective Attorneys General. The Petitioners are attempting to enforce the terms of the 1986 Final Settlement Agreement ("FSA") among all the States, the federal government and virtually the entire oil industry, including respondent Chevron U.S.A., Inc. Without review by the Court, the States would have no recourse to recover hundreds of millions of dollars to assist energy consumers in the United States.

Since the early 1980s, billions of dollars have been returned to energy consumers within the United States as a result of oil overcharge refund cases, of the type represented by this matter.[2/] NASEO members have distributed these funds to extraordinarily worthy causes during the past two decades. These refunds have helped respond to the high cost of energy. We are in a period of extremely high and volatile, oil prices which has negative ripple effects throughout the entire

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[2/] *See, e.g., In re Department of Energy Stripper Well Exemption Litigation,* 880 F. Supp. 1466 (D. Kan. 1995).

economy. United States' energy consumers are at great risk. The funds recovered through this case would be extremely critical.

Oil overcharge refunds have been used, and would be used, for critical public purposes. The Low-Income Home Energy Assistance Program ("LIHEAP") provides funds to the poor, elderly and disabled to help fund their heating and cooling costs. These extremely poor Americans frequently have to choose between heating, cooling or eating. The Low-Income Weatherization Assistance program helps the poor by adding energy efficiency measures to their homes, which generally reduces average annual residential energy use by twenty-three percent. Other funds have been utilized to reduce energy costs for all other Americans, promote alternative fuels, help farmers and small businesses and generally to benefit all American consumers. There is no substitute for these refunds. They will help all Americans.

## CONCLUSION

For the reasons stated herein, and in the Petition for Writ of Certiorari, the Writ should be granted with respect to each of the questions presented in the Petition, and, if appropriate, the decisions below dismissing the appeal for lack of jurisdiction should be summarily reversed.

Respectfully submitted,

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